

REQUEST FOR PROPOSAL



THE STATE BAR of CALIFORNIA

This document is a Request for Proposal (“RFP”) for consulting services as the first phase in developing an integrated system to support the operations of the Office of Admissions of the State Bar of California.

Please submit 5 hard copies of your proposal or e-mail your proposal requesting an acknowledgement of receipt by e-mail **no later than 5 p.m. on April 23, 2004**. All responses to the Request for Proposal shall be submitted to:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Attn: Ken Papai

Contact Information:
Phone: 415-538-2486
E-mail: Ken.Papai@calbar.ca.gov
Fax: 415-538-2592

I. INTRODUCTION

The State Bar of California, created in 1927 by the Legislature and adopted into the California Constitution, is a public corporation within the judicial branch of state government.¹ Acting as the administrative arm of the California Supreme Court, the State Bar regulates the legal profession and the practice of law. The State Bar’s general duties include examining applicants for admission, formulating rules of professional conduct, disciplining members for misconduct, preventing the unlawful practice of the law, and certifying lawyers as legal specialists. To date, there are approximately 195,000 members of the State Bar. Membership is required in order to practice law in California. The organization has approximately 600 employees and an operating budget of over \$50 million. Approximately half the State Bar’s employees are in San Francisco and half are in Los Angeles, with a small satellite office in Sacramento.

¹ General information about the State Bar of California is available at the State Bar Web site, www.calbar.ca.gov.

In accordance with California law and the State Bar's procurement policies, contracts in excess of \$50,000 are ordinarily subject to formal competitive bidding. As a governmental agency, the State Bar usually receives favorable governmental pricing and contract terms and conditions.

The State Bar is seeking proposals to analyze business and functional requirements for a new integrated system to support the Office of Admissions of the State Bar of California, and to state those requirements in terms that software developers can use to build the new system.

II. GENERAL INFORMATION

A. Submission Requirements

The submission requirements for the RFP are detailed below. **Any proposal shall constitute an irrevocable offer for 60 business days following the deadline for its submission.** Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

Where any notice is required or permitted to be made in writing, the notice to the Bar must be sent by U.S. mail **and** either facsimile or e-mail.

1. A brief description of the history and organization of your firm and of any proposed subcontractor. (Those who intend to submit a proposal in response to this RFP are addressed in the remainder of this document as “you.”)
2. Copies of business licenses, professional certifications or other credentials, together with evidence that your firm, if a corporation, is in good standing and qualified to conduct business in California.
3. The most recent annual report or balance sheet and income/expense statement, including financial data and an indication of resources dedicated to research and development.
4. References for at least three clients for whom you have produced work comparable or substantially similar to items described in the “Statement of Work” section below. The references must indicate when the work was done; include samples of work that demonstrates your ability to produce those items; identify those responsible for producing them; and indicate whether they were produced on time and within budget. The State Bar will contact references only if you are a finalist in the evaluation process and only after notifying you.
5. Qualifications, background and experience of the project director and other staff proposed to work on the project.
6. A general description of the techniques, approaches and methods to be used in completing the project.

7. A concise summary of the best evidence that you are able to provide, at the highest level of quality, the services described in “Statement of Work” below.
8. A detailed cost proposal, including any travel costs and other expenses. As the State Bar may award a contract based on the initial offer, you should make your initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those proposers falling within a competitive range, and to request revised pricing offers from them and make an award and/or conduct negotiations thereafter.
9. Disclosure of any interests that you or your company holds in companies which could foreseeably be the recommended solution, or part of the solution, for Phase 2 of this project, including but not limited to stock or other ownership interests, service contracts, OEM agreements, and remarketing agreements.

B. Rejection of Proposals

The State Bar reserves the right in its sole discretion to reject any or all proposals in whole or in part, without incurring any cost or liability whatsoever. All proposals will be reviewed for completeness of the submission requirements. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Immaterial deviations may cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse you from full compliance with the RFP requirements.

Any proposal determined to be not competitive, or where the cost is not reasonable, may be rejected.

Proposals that contain false or misleading statements may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

C. Evaluation Process and Highest Scored Proposer

An evaluation team will review in detail all proposals that are received to determine the Highest Scored Proposer (“HSP”).

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal's meeting administrative requirements, technical requirements, the review team's assessment of the quality and performance of the equipment and services

proposed, and cost.

During the evaluation process, the State Bar may require your representative to answer questions with regard to the proposal and/or require you to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team.

The following criteria will be used in reviewing and comparing the proposals and in determining the HSP. The weight to be assigned to each criterion appears following each item.

1. Responsiveness of the proposal to original specifications set forth in the RFP, including agreement with the State Bar's contracting requirements (30%).
2. The technical ability, capacity, and flexibility of the proposer to provide, at the highest level of quality, the services described in "Statement of Work" (see Section IV below), in a timely manner and on budget, as confirmed by the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (20%).
3. The financial viability of the proposer as evidenced by standard financial reports and by related factors such as its business plan, market position, and strategic partnerships (20%).
4. The total cost of the proposal. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the solution over the term of the contract (30 %).

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice sent to proposers on or about May 21, 2004, of the Bar's intention to award the contract to the HSP. It is anticipated that final selection of the HSP will be made by June 2, 2004. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected consultant will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements sections below.

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If agreement on the terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any others who submitted timely, responsive and responsible proposals to this RFP.

Questions regarding the State Bar's award of any business on the basis of proposals

submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing to:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639
Attn: Ken Papai

Contact Information:
E-mail: Ken.Papai@calbar.ca.gov
Facsimile: 415-538-2592

E. Errors in the RFP

If you discover any ambiguity, conflict, discrepancy, omission, or other error in the RFP, you should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by issuing an addendum to all potential proposers to whom the RFP was sent.

If prior to the date fixed for submissions, you know of or should have known of an error in the RFP but fail to notify the State Bar of the error, you shall bid at your own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

F. Questions Regarding the RFP

Questions regarding the RFP may be addressed in writing to Mr. Ken Papai at the State Bar (contact information above).

All questions and answers regarding the RFP may be shared with all proposers.

If a question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, you may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, you must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and you will be notified.

If you believe that one or more of the RFP's requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, you may submit a written request that the RFP be changed. The request must set forth the recommended change

and reason for proposing the change.

The deadline for the State Bar to receive questions and/or requests for changes on the RFP is 5:00 p.m. on April 9, 2004. The State Bar will not respond to any question or change request received after that date.

G. Addenda

The State Bar may modify the RFP prior to the date fixed for submission by mailing, e-mailing or faxing an addendum to the proposers to whom the RFP was sent. If any proposer determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than three (3) days following the receipt of the addendum.

H. Withdrawal and Resubmission/Modification of Proposals

A proposal may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by an appropriate official of your firm. Your firm may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline.

Modification offered in any other manner, oral or written, will not be considered. Proposals may not be modified after the evaluation process begins.

I. Protest Procedure

You may protest the award if it meets all the following conditions:

1. You have submitted a proposal that you believe to be the lowest cost responsible proposal, under the criteria set forth above;
2. You believe that your proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. You believe that the State Bar has incorrectly selected another vendor.

If you are qualified to protest you should contact Bill Brauer at the State Bar of California, telephone, 415-538-2543, e-mail Bill.Brauer@calbar.ca.gov, to attempt an informal resolution. If he is unable to resolve the protest to your satisfaction, you must file a written protest within five (5) days of the notice of intention to award contract. The written protest must state the facts surrounding the issue and the reasons you believe the award to be invalid.

The protest must be sent by certified or registered mail or delivered personally to:
The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Attention: Robert Hawley, Deputy Executive Director

Protests will be reviewed and decided by the State Bar's Award Protest Team within thirty (30) days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

J. News Releases

News releases pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

K. Disposition of Materials

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at your expense. One copy of each proposal will be retained for official files and will become a public record upon receipt by the State Bar. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. Your consent will be requested before release of such pages to non-State Bar personnel. By submitting a proposal, you agree to these terms and waive any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

L. Consulting Contracts – Prohibition on Follow-On Contracts

No consultant who has been awarded a contract for Project 1 may submit a bid for, nor be awarded a contract for Project 2.

III. BACKGROUND

A. Dual Project Approach

The State Bar of California envisions a dual project approach to replace the systems that support its Office of Admissions with a single integrated system. The unique nature of the admissions process requires that the new system be custom built.

The replacement process comprises two projects. The goal of the first project ("Project 1"), which is the subject of this RFP, is to analyze business and functional requirements for the new system and state them in terms that software developers can use to build the

system. Successful completion of Project 1 requires a thorough understanding of existing systems; identification of improvements needed in the new system; a technical architecture for this system; and a high-level plan for completing it, starting with a functional description of its initial modules.

The goal of the second project (“Project 2”), which the State Bar anticipates may, but need not, be the subject of a subsequent RFP, will be to build the new system using the analysis, technical architecture and plan developed from Project 1. We anticipate Project 2 to be completed in two phases: a design phase and a construction phase. The objective of the design phase is to produce detailed technical specifications that account for all system features and operations. The specifications should serve as a detailed development plan and include screen layouts, process diagrams, pseudocode, and the like. The specifications should also enable the developer to estimate realistically the cost of the development. The objective of the construction phase is, then, to code, test and deliver the new software.

The State Bar may, but need not, decide to use the Project Manager of Project 1 as the Project Manager for Project 2, since that person will already be familiar with the workings of the system from a technical and business perspective, and thus be best suited to undertake and efficiently direct such an operation. **This RFP is for services to complete Project 1.** The State Bar expects the first portion of Project 1 to be produced in no more than six months, on the assumption that a single consultant working full time will need two weeks to become familiar with existing systems; six weeks to work with business users to define functional requirements; and four weeks to create initial drafts of functional requirements and project plan. The State Bar expects the project management portion of Project 1 to be completed within the time frame laid out in the project plan.

B. Office of Admissions: Operational Structure

Headquartered in San Francisco and led by a member of the State Bar’s senior management team, the Office of Admissions has 60 permanent employees in San Francisco and Los Angeles who assist the Committee of Bar Examiners of the State Bar to meet its statutory responsibilities:

- Admissions determines the moral character of applicants for admission to practice law in California. In 2003, there were approximately 6,393 moral character determination applications and an additional 552 moral character determination extension applications.
- Admissions develops, administers, and grades the California Bar Examination. In 2003, approximately 13,000 individuals took the examination.
- Admissions develops, administers, and grades the First-Year Law Students’ Examination. In 2003, approximately 1,000 individuals took the first-year examination.

- Admissions oversees accreditation of 18 law schools in California that are not approved by the American Bar Association and an additional 12 unaccredited law schools and 12 correspondence law schools.

To manage these responsibilities, the Office of Admissions has been organized into six departments: Administration, Educational Standards, Moral Character Determinations, Examinations, and Operations and Management.

Administration

The Administration department, headed by a Director of Administration located in San Francisco, coordinates the activities of the Committee of Bar Examiners with those of the Board of Governors and other State Bar departments; provides staff support to the committee, for instance by organizing its agendas and producing minutes of its meetings; provides staff support to bodies that serve as adjuncts to the Committee of Bar Examiners, including the Law School Council, the Law School Assembly, and special task forces established by the committee; assists the Senior Executive for Admissions with managerial responsibilities for the Office of Admissions, particularly with regard to fiscal control and staffing; and oversees the processing of petitions for testing accommodations during the bar examination.

Using recently adopted guidelines and policies, department staff recommend granting, modifying, or denying requests for testing accommodations. Consultants provide assistance as necessary. If the Senior Executive denies a petition, the petitioner has a right of appeal to the Committee of Bar Examiners through its Subcommittee on Testing Accommodations. Accommodations, granted to more than 600 applicants with disabilities, have ranged from allowing additional time to providing test questions in Braille and large print.

The Director for Administration, with the assistance of a Deputy Director, also has operational responsibility for grading the bar examination. Essay and performance questions are graded by a pool of approximately 140 examination readers who are organized into teams selected by the Administration staff. Each team is led by a member of the Board of Reappraisers, a body that reviews answers with borderline scores, and includes eleven experienced readers and three or four apprentice readers, all of whom must have passed the bar examination in their first two attempts. The grading process, which utilizes standards to ensure consistency in grading, generally takes three months for the February Bar Examination and four months for the July Bar Examination. The process concludes with the mailing of results and their simultaneous release on the Web. Grading of the First-Year Examination (internally known as the “FYLSX”) takes approximately one and one-half months from beginning of the grading process to the mailing of results, which are not posted on the State Bar’s Web site.

Educational Standards

The Educational Standards department is managed by the Director for Administration with the assistance of the Director for Examinations, both of whom are located in San Francisco. This department, assisted by two educational standards consultants retained by the Committee of Bar Examiners, is responsible for general oversight of law schools in California; registration of unaccredited and correspondence law schools; accreditation of California law schools pursuant to the *Rules Regulating Accreditation of Law Schools in California (Accreditation Rules)*; and the pre-legal and legal education requirements for admission to practice law in California.

Nineteen California law schools have been granted state accreditation by virtue of their being accredited by the American Bar Association; another eighteen law schools, though not accredited by the ABA, have satisfied the committee's accreditation standards; and another twelve law schools have been authorized by the state to grant degrees but without committee accreditation. Twelve correspondence law schools registered with the Committee conduct programs of legal education within the state.

Moral Character

The Moral Character Determinations department, headed by a director located in San Francisco, is responsible for conducting moral character investigations of the approximately 7,500 individuals who apply for admission to practice in California each year.

To determine whether applicants have "good moral character," as required by Business and Professions Code Section 6060, the staff of this department consider fingerprint histories, driver license records, recommendations of character references and employers, and other information as deemed appropriate. If the character and fitness of an applicant to practice law appear to be problematic, his or her file is referred to the Committee of Bar Examiners' Subcommittee on Moral Character. The Subcommittee may make a determination on the record or may invite the applicant to meet informally with the Subcommittee to discuss its concerns. Following such a meeting, the Subcommittee may make a positive or negative determination of moral character. It may also require a psychiatric evaluation or ask staff to further investigate an applicant, usually for problems of substance abuse, or make a positive determination subject to an applicant's meeting specified conditions. Subcommittee recommendations are typically adopted by consent by the full Committee during one of its regular meetings, absent a request from a Committee member that an application be given further consideration.

An applicant who receives a negative moral character determination may apply to the State Bar Court for a formal de novo hearing with respect to his or her moral character. The applicant has the right to reapply for a moral character determination after the expiration of two years from the date the Committee initially denied his or her application.

Examinations

The California Bar Examination encompasses both a General Bar Examination (internally known as the “GBX”) and an Attorneys’ Examination. The General Bar Examination is a three-day test consisting of six one-hour essay questions, two three-hour performance tests, and the Multistate Bar Examination, a 200-item multiple-choice test administered in two three-hour blocks. Given in February and July each year, the General Bar Examination is required of all applicants for admission to practice law in California. Attorneys in good standing who have been admitted in another jurisdiction for the past four or more years may qualify to take the Attorneys’ Examination, which consists of the essay and performance test questions of the General Bar Examination.

The First-Year Law Students' Examination (FYLSE), given in June and October each year, consists of four essay questions administered in a four-hour block and 100 multiple-choice questions administered in a three-hour block. Four categories of students must take the First-Year Law Students’ Examination upon completion of one year of law school study: those enrolled in residence law schools neither accredited by the Committee nor approved by the American Bar Association; those enrolled in correspondence law schools; those studying in law offices or judges’ chambers; and those lacking two years of college work prior to attending law school. These students must pass the examination within three attempts in order to receive credit for law study accumulated up to the point of passage. Those who pass the examination after four or more attempts receive credit for only one year of law study.

The Examinations department, headed by a director in San Francisco, supervises the acquisition and development of the essay and performance test questions for all examinations other than the multiple-choice Multistate Bar Examination, which is purchased from the National Conference of Bar Examiners. Essay questions for the California Bar Examination and the First-Year Law Students’ Examination and multiple-choice questions for the First-Year Law Students’ Examination are solicited from law professors. The Board of Reappraisers, a group of eight experienced examination readers appointed by the Committee of Bar Examiners, edits their submissions. Performance test questions are drafted and edited by a team of practitioners and academics in collaboration with a member of the Board of Reappraisers. All questions selected for examinations are pre-tested before being submitted to the Committee for review and approval during working sessions conducted in the spring and fall of each year.

A separate test answer booklet is used for each of the eight written questions of the General Bar Examination. After an examination, test books are collected, sorted by applicant number, and shipped to Admissions from test centers throughout the state. Upon receipt, the books are put into applicant order and coded for anonymity. Registrant information downloaded from the State Bar’s legacy IBM AS/400 system to a Microsoft Access grading system is used to create a record for each applicant who has taken the examination. Through the course of three grading sessions, graders receive instructions on grading and calibrating answers to a particular question. Each grader then receives multiple applicants’ answer books for the question. Graders submit scores manually and on a Scantron sheet, and their

scores are statistically validated to ensure that their assessments are comparable.

The multiple-choice examination answers are shipped to the National Conference of Bar Examiners for grading. Approximately one month after administration of the examination, the scores are reported back to Admissions electronically, downloaded into the grading system, and combined with the scores for the essay portions of the examination.

Through the use of a scaling formula, the grading system identifies applicants whose composite scores were sufficiently high or low to qualify as a clear pass or fail and those whose scores suggest that a second reading is appropriate. If applicants' answers are read a second time, the scores from the second reading are averaged with the scores from the first reading; the average scores are scaled; and one of three dispositions is made: pass, fail, or reappraisal. Reappraisal occurs when scaled scores total approximately 1440 and is conducted by senior readers who determine whether an applicant should pass or fail on the basis of all written answers and the multiple-choice score. Following completion of this three-phased grading system, the results are uploaded to the AS/400 system and result letters are generated. Only failing applicants receive their scores, including if applicable the average raw score for each question, raw scores and subscores for the multiple-choice portion, and a scaled total score for the written and multiple-choice scores combined.

The Board of Reappraisers directs the grading of examination answers and makes final pass/fail decisions about examination papers that are very close to but below the final passing score. Once examination results are released, the Director for Examinations reviews and responds to applicants' requests for reconsideration. The director also conducts ongoing audits of the examination process to ensure that the examination remains psychometrically sound and is meeting its testing objectives.

Operations and Management

The Operations and Management department, headed by a director and assisted by a Deputy Director who are both located in Los Angeles, is responsible for budgeting; for receiving and initial processing of all registration, moral character and examination applications; for determining professional or educational eligibility to take Committee administered examinations; and for administration of examinations.

The California Bar Examination is administered in 14 to 20 locations throughout the state twice a year: in late February to approximately 4,000 applicants and in late July to approximately 9,000 applicants. The First-Year Law Students' Examination is administered in San Francisco and Los Angeles in June and in October. Due to growing enrollments in correspondence law schools, it is anticipated that approximately 1,000 applicants will take this examination in 2004.

C. Current Technology

Most of the systems that support essential business functions at the State Bar of California are custom-written in IBM RPG and utilize DB2 databases that run on the IBM AS/400.

Some newer systems, such as the Hummingbird DM5 Document Management System and the inAccord system for the Lawyer Assistance Program² use Microsoft SQL Server back-ends, as will new Finance and Human Resources systems slated for implementation in 2004.

The State Bar's strategic technology plan is to transition all systems to the Microsoft .NET architecture. The newer systems are consistent with that direction, and updates to legacy systems have been made with a .NET-compatible tool called AVR, a product of ASNA ("Amalgamated Software of North America, Inc").³ The new Admissions system that is the ultimate objective of this RFP must be supportable within the State Bar's technological environment and be consistent with the organization's .Net strategy and utilize the development and programming of the new system in one or more of the more modern .NET languages such as C# and VB.NET.

The existing systems assist the Admissions staff with registration of law students and attorneys; determination of pre-legal and legal education eligibility; applications for and administration of the California Bar Examination and First-Year Law Students' Examination, including the processing petitions for testing accommodations filed by applicants with disabilities; production of examination results; processing of moral character determination applications; tracking scores on the Multistate Professional Responsibility Examination, administered by the National Conference of Bar Examiners; and producing motions to the Supreme Court of California certifying the eligibility of candidates for admission. In addition, the system keeps records on unaccredited and correspondence law schools and provides law school information for eligibility determinations. System support for these operations is described below.

Registration. Law students intending to take the California Bar Examination are required to register with the State Bar within three months of entering law school,⁴ supplying name, address, undergraduate school, law school, and similar information. This is the vehicle for

² Information on this program is available at

http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?sImagePath=Attorney_Assistance_Programs.gif&sCategoryPath=/Home/Attorney%20Resources/Lawyer%20Discipline%20%26%20Complaints/Attorney%20Assistance%20Programs&sFileType=HTML&sCatHtmlPath=html/Attorney-Resources_Lawyer-Discipline_Attorney-Diversion-AMPERSAND-Assistance-Program_Discipline_attassist.html.

³ Information on AVR and ASNA is available at <http://www.asna.com/>. One of the main benefits of AVR is that its Windows interface makes data entry more efficient because it allows processes to be flexibly controlled. The new Member Billing application developed with AVR Version 4.0 is instructive. For instance, because AVR allows use of graphical conventions like file-folder tabs, a billing analyst can click on a tab to go directly to a pertinent screen rather than be routed through a sequence of irrelevant screens. This flexibility has reduced operational steps and reduced the need for seasonal temporary employees. In addition, the AVR Windows platform allows data to be readily shared with other applications. Legacy data can be easily merged with letter or notice templates in Word or WordPerfect with the click of a mouse. Similarly, upon completion of a system-tracked event, an e-mail notice can be sent automatically to a staff member assigned to complete a related function. Another significant benefit is that insofar as AVR is .Net-compliant, the product positions the State Bar to transition AVR versions of legacy systems from the AS/400 if it elects to do so.

⁴ See the Rules Regulating Admission to Practice Law in California, Rule V, at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?sImagePath=Bar_Exam.gif&sCategoryPath=/Home/Attorney%20Resources/Bar%20Exam&sHeading=Rules%20Regulating%20Admission%20to%20Practice%20Law%20in%20California&sFileType=HTML&sCatHtmlPath=html/GI_Rules-Regulating-Admission.html.

establishing a permanent record for the applicant, which is primarily tracked through the use of a registration number, which in most cases is an applicant's Social Security Number. The fact that an applicant is registered with the State Bar is considered confidential and is not generally available to other State Bar staff outside the Office of Admissions, nor is such information released to third parties except by court order. Law students have the option of registering in either of two ways. They may fill out a registration form and mail it to the State Bar, where its data is then entered by bar staff, or they may register online. The Office of Admissions has contracted with XAP Corporation (www.xap.com) to host the registration system online at calbar.xap.com. Data is batched and downloaded to a State Bar AS/400, where registrant records are created or updated.

Eligibility Determinations. Following receipt of a registration form, staff determines whether the applicant has met the pre-legal education requirement. The determination process begins with system-generated letters that are sent to law schools with certification forms and concludes with the receipt of completed forms certifying that schools have confirmed eligibility. The forms are bar coded and tracked through the system. When law students deemed eligible apply later to take the California Bar Examination or the First Year Examination, computer-generated forms are mailed to law schools to confirm that the students have met educational requirements that qualify them to take the examinations. Eligibility confirmation is recorded electronically in an applicants' permanent record.

Administration of Examinations. Applicants have the option of applying to take a bar examination online at the XAP site mentioned above or by downloading the examination forms from XAP and submitting them by mail. Late fees are incurred for missed deadlines, and applications filed after the final filing deadline are rejected. AS/400-based custom software tracks the receipt of transcripts and other data about an applicant's educational and professional history, test site availability, test center assignment, requests for testing accommodations, and the like. Staff reviews the petitions for testing accommodations and determines whether they should be granted, modified or denied. These determinations are communicated to test administrators throughout the state.

Acknowledgment letters are generated in response to all applications. If an application is incomplete, acknowledgment letters are generated at specified intervals until the application is complete. If an application is not complete by a specified time, a notice is generated that the application has been abandoned. All system-generated documents that applicants are expected to complete and return are bar coded. Upon receipt, they are scanned to update the system. Approval letters or examination admittance tickets are generated for complete and approved applications. Operational reports advise staff regarding the status of applications, including those ready for final review.

Administration of examinations presents logistical challenges. Multiple test center sites must be rented throughout the state and applicants assigned to those sites. Assignments are made on a first-filed, first-served basis, except for those requesting testing accommodations. When applicants have been deemed to meet requirements for legal education or attorney status and have paid requisite fees, staff produces admissions tickets, bulletins, and examination materials, which may include questions in special formats such as large print or audio tapes

for applicants with disabilities. Applicants who want to use laptop computers for examinations must use vendor-supplied software that restricts use of the laptop to the test. Staff also recruits and hires test center proctors and other examination personnel, such as security guards, electricians, and assistants for those granted testing accommodations.

Moral Character Determinations. Applicants must download bar-coded forms requesting information on applicants' moral character from the State Bar Web site. Applicants send the forms to current and former employers, personal references, and law schools. Online completion of the forms is desirable but currently not possible. Returned forms are scanned in batches to update a tracking system. Admissions staff independently checks the background of applicants as well. Each month the State Bar electronically sends a list of applicants to the State Department of Motor Vehicles (DMV). The DMV then electronically updates the tracking system with any relevant information on applicants. Background checks, which may include review of fingerprint records, are also done with the FBI and the California Department of Justice. Once Admissions has received all references and background information, staff makes a determination regarding an applicant's moral character. A favorable assessment is valid for two years. An applicant who has not been admitted after eighteen months is notified by letter that an extension must be requested before the expiration of the two-year period. An applicant can file as many extensions as necessary.

Other Admission Requirements. In addition to passing the California Bar Examination and having a positive moral character determination, an applicant must take and pass the Multistate Professional Responsibility Examination (MPRE) and not have outstanding family support payments. The Department of Social Services Children and Family Services Division, which tracks outstanding family support obligations using the State Licensing Matching System (SLMS), provides Admissions with a monthly electronic list of those who have outstanding family support obligations. An applicant whose name appears on the SLMS list receives no further consideration until the obligations have been discharged. An applicant with a passing MPRE score who does not appear on the SLMS list may have an incomplete application for some other reason. If so, the MPRE score is recorded and the components of the application are processed in the next batch of new registrants. If an applicant took the MRPE for another jurisdiction and never reported the score to California, Admissions receives an official record of the score and enters it into the system manually.

Supreme Court Motions. After cross-checking all components of an application for inconsistent data, the system generates a motion to the Supreme Court of California listing the names of all those who have passed the bar examination and met all other requirements for admission. When bar examination results are released in May and November, the motions will list the names of all those who have passed and met other requirements for admission. These motions contain thousands of names. Motions with fewer names are generated weekly, more or less, as applicants who have passed the examination satisfy the remaining requirements.

Letters to Applicants. Applicants who have passed the bar examination, been deemed to have positive moral character, received a scaled score of 79 or higher on the MPRE, and

have no record of outstanding family support obligations are sent a letter advising them that they may take the attorney's oath of office and become members of the State Bar.

Applicants who passed the examination but have yet to meet one or more requirements for admissions are advised of their status and warned that the passing grade for the bar examination remains valid only for a period of five years from the date of the examination.

Bar Examination Reports. Extensive custom reports are used at all stages of the Admissions process to track individual applicants and generate statistics.

Law Schools. Admissions uses a database of undergraduate institutions and law schools to generate letters to deans to request comment on the good moral character of students who have attended their schools, certify that pre-legal and legal education requirements have been met by applicants registering and taking examinations, send pass lists, and track law schools that are registered with the Committee of Bar Examiners. The database is updated regularly to record changes in school administrators and to note whether a school is registered with the Committee of Bar Examiners as an unaccredited or correspondence law school, a California accredited or candidate law school, or a school approved or provisionally approved by the American Bar Association. The database thus serves as a history of a school's registration and/or accreditation status.

D. Inadequacies of the Existing Software

A new integrated Admissions system should address four principal problems with existing systems. The first problem is that the applications hosted on the AS/400 are difficult to navigate and are not functionally integrated. The AS/400 hosts the systems used for registration; exam administration, exclusive of exam scoring; moral character determination; production of motion documents for the Supreme Court; and reporting. Although these systems share common data, related functions need to be better presented through a more modern, intuitive user interface. For instance, the current system processes and tracks testing accommodation petitions separately from the AS/400. Presently, tracking occurs only when a petition is received and when it is either granted or denied. The ideal system would note the type of disability claimed and the accommodation sought; highlight relevant time frames and flag when they have expired; indicate whether a petition was referred to an outside consultant or more information was sought; and indicate whether the petition was ultimately granted.

The second problem is that the applications used to register applicants and to grade bar examinations are not well integrated with the AS/400 applications. Applicants must register for the bar examination using a Web-based system hosted by XAP (see <http://www.xap.com/>). Data collected by XAP is then uploaded in batch to the AS/400. Grading of bar examinations is managed by an independent PC-based application written in Access and VBA. Although the Access interface is more user friendly than the AS/400 screens, Access must import registrant data from the AS/400. Better integration of all these systems should eliminate redundancies in data, present related functions in fewer screens, and provide more comprehensive reports.

The third problem is that current systems rely on business rules that need to be re-examined. Admissions began to use computer systems in the early 1990s, when it contracted for testing and data processing services provided by the Educational Testing Service (ETS). When it later developed its own internal systems, Admissions comprehensively analyzed its requirements and fit them to appropriate business rules. Because requirements have changed significantly since the first custom system was introduced in 1991, they need to be freshly assessed.

The fourth problem is incomplete automation of the processes for moral character determinations, requests for testing accommodations, and notification of law schools. Approximately 7,500 moral character applications and 400 extension applications are processed each year.⁵ Although reference forms for moral character determination are provided on the Web and an AS/400 system tracks returned forms and background information, the process of assessing moral character would be improved if applicants could submit their moral character applications and extension applications via the Web and pay their fees online as well. The system would flag certain answers on applications (e.g., boxes checked “yes” or “no”) to sort out those that require no further processing because they fail to meet some essential threshold requirement. Reference forms would be completed online, submitted electronically, and processed by the system. In addition, specified events would trigger correspondence to the applicants, their references, and stakeholder agencies.

The processing and tracking of testing accommodations petitions and the accommodations granted is an important priority for the new system. As mentioned above, currently much of the processing is handled manually and only a portion of the data is captured electronically. An applicant files a petition for testing accommodations on the basis of one or more disabilities and seeks accommodation. The petition is initially checked to determine that all forms and required documents are received so that the petition can be considered complete and processing can continue. An evaluation is done to determine whether more information is needed from the applicant and/or the specialist. Once the file is complete, a decision is reached as to whether the petition should be referred to an outside consultant for review. If it is referred for such review, the reviewer recommends granting, modifying, or denying the

⁵ The Moral Character Application Process typically consists of the following steps:

- Applicants submit an application form, a signed authorization and release, 2 sets fingerprint cards, and the processing fee -- \$363 for moral character applications and \$173 for extension applications.
- The Operations and Management Division verifies that the critical elements of the application are complete.
- If critical information is missing or incomplete, the applicant is notified.
- If the Application is complete, it is included in the AS/400 database and officially “filed.”
- Data is entered on the AS/400 database including: aliases, previous employers, personal references, driver’s license number, and schools attended.
- Reference letters are mailed to previous employers, personal references, licensing agencies, and law schools attended.
- Fingerprints are submitted to the California Department of Justice and the Federal Bureau of Investigations.
- The moral character application file is transmitted to the Moral Character Determinations Division.
- Driving records are secured from the California Department of Motor Vehicles
- An assessment is made whether the application is complete. This includes a review of gaps in work and employment history; gaps in residence history; missing responses to questions; and contradictions in responses to questions.
- Data that has been received is analyzed and additional information is secured from the applicant, if needed. The type of information reviewed includes but is not limited to military history; litigation history; fiduciary and financial responsibility; compliance with the rules of other entities; and criminal history.
- Files are cleared administratively or a report is prepared and transmitted to the Committee of Bar Examiners.

request; a determination is made; and the applicant is notified. The applicant has the right to appeal a denial or modification. The appeal is considered by the Committee of Bar Examiners, which may affirm, modify, or reverse staff's determination. At all times, certain time constraints may or may not be involved depending on the date of the examination the applicant intends to take. Petitions can be filed without an application to take a particular examination, although a decision may be deferred depending on the nature of the disability. Status reports are needed throughout the process to confirm the timely processing of petitions; account for the number of petitions filed in relation to a particular disability; identify petitions referred to outside consultants and to whom; and note whether more information has been requested. Status reports are also needed on the status of petitions (in house, decision made, appeal pending, etc.); the test centers to which applicants have been assigned; and applicants' laptop computer configuration.

Admissions regularly updates law schools regarding changes to procedures and rules and regarding the moral character eligibility of applicants for the First-Year Law Students' Examination and the bar examination. Admissions also transmits pass lists to the schools after examination results have been released. Letters regarding the status of applications for eligibility and moral character determinations are generated by the AS/400. All other communications are generally memoranda that staff creates as needed. Whether created automatically or by a staff member, all communications are sent through the mail. Admissions system would like to manage all these processes electronically insofar as possible, for instance by using internal systems and a secure Web site where law school registrars could log on individually to receive information relevant to their respective law schools.

In solving these problems, the new Admissions system should provide a Web-based interface for applicants and others, whether individuals or institutions, who have a role in the admissions process. Because annual changes in Admissions rules and procedures have required time-consuming and costly programming, the new system should also enable Admissions management to easily modify business rules and otherwise adapt the system to new requirements insofar as possible.

IV. STATEMENT OF WORK

The consultant selected for this Project 1 will be expected to provide the following.

A. Scope of work statement.

A statement of the scope of work required to produce items B-F below.

B. Functional requirements.

After you have become generally familiar with Admissions operations and developed a comprehensive technical architecture for a new integrated Admissions system, you will consult with the State Bar project team in order to identify the module or modules that

can best serve as the first phase of the new system, and then **develop functional requirements for the module (or modules)** within the timeframe referenced above in this RFP. The modules currently in use handle fairly discrete operations and may suggest possibilities for the first phase of system development. The current modules are described above in this RFP.

C. Project plan.

A high-level project plan that accompanies the functional requirements will serve as the framework for the all other deliverables. The plan, which must evidence a comprehensive understanding of the operations of the Office of Admissions, will identify the major tasks of software development; estimate a schedule for completing the tasks; and specify the criteria by which the software development project will be deemed successful. This will serve as a preliminary plan for Project 2. Developed with Microsoft Project, the project plan must identify major tasks, estimate elapsed times for completing them, and identify milestones and dependencies. It must also explain any methodology recommended for managing the project and include a strategy for converting legacy data.

D. Resources/cost estimate

A statement of all assumptions regarding resources required to complete the project plan, whether provided by the State Bar, you, or third parties, and of estimated not-to-exceed costs for all work necessary to deliver the new software. Costs should include any anticipated travel expenses and be otherwise comprehensive.

E. Risk assessment.

A statement that identifies significant operational and resource constraints that may impede achievement of project objectives and proposes strategies to minimize them.

F. Project glossary.

A document that defines specialized procedural or substantive terms relevant to the projects.

To be considered responsive, a proposal must explain the approach to and estimated timetable for completing each item described above, acknowledging any assumptions as well as constraints such as those imposed by State Bar's Strategic Technology Plan, current technological environment, and budget.

The results of Project 1 may, but need not, be used as the basis for a Request for Proposal for Project 2.

V. CONTRACTING REQUIREMENTS

Upon selection of a consultant, the terms set forth in this RFP are to be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually

acceptable. If appropriate, the State Bar's first choice is to incorporate the master purchasing terms and conditions applicable to the State of California to the Bar's agreement with the selected consultant ("Consultant").

The State Bar contemplates that, in addition to the technical terms described above in this RFP, final agreement between the State Bar and Consultant will include, without limitation, the following terms. Any reference below to "the Agreement" or "this Agreement" refers to the contract that will be entered into with the Consultant, and does not refer to this RFP. Consultant's agreement to contract on these terms shall be presumed unless specifically reserved by Consultant in its proposal.

A. Time of Essence.

Time is of the essence with respect to Consultant's performance of the services and equipment to be provided.

B. Warranties and Representations

Consultant warrants and represents that it possesses such expertise, experience and resources to perform the scope of services required in a diligent, timely and professional manner consistent with the standards of the industry. Consultant will supply at all times an adequate number of well-qualified personnel to perform the work. Consultant will provide a contact person available and authorized to remedy any non-conformity with this warranty.

Consultant warrants that its solution shall conform to and be reasonably free of error and/or defects in material and workmanship, and fit for the purpose for which it is to be used. Consultant will, at its sole cost and expense, promptly perform any and all corrections of error that occur as a result of its own, its contractors' or subcontractors' negligence, make any corrections and modifications to the solution necessary or desirable to cure any non-conformity with the specifications, and repair said system or components so as to remedy any defects in material and/or workmanship.

Consultant represents and warrants that the solution will not infringe any copyright or other proprietary right (including trade secrets) of any third party, and that Consultant has full authority to grant all rights to the State Bar hereunder.

Consultant represents and warrants that no claim, whether embodied in an action past or present, of infringement of any patent, copyright, trademark, or other intellectual property right, has been made or is pending against Consultant or any entity from which Consultant has obtained such rights relative to the proposal presented to the State Bar hereunder.

C. Equipment, Tools, Supplies

Consultant will supply all equipment, tools, supplies, offices, personnel,

instrumentalities, transportation, support services and insurance required. Consultant is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

D. Financial Interests

Consultant represents and warrants that all potential conflicts of interest were disclosed in its response to the State Bar's RFP. Consultant will immediately notify the State Bar, in writing, of any potential or actual conflicts that arise or exist between or among the State Bar and any other of Consultant's clients or persons for whom Consultant provides services. The State Bar retains the right, in its sole discretion, to terminate Consultant's Services upon written notice, if in the State Bar's sole opinion, any potential or actual conflict cannot be immediately resolved or will in any way compromise the integrity of or adversely affect the State Bar.

Consultant will abide by the State Bar's Conflict of Interest Code and will annually complete the Form 700 Statement of Economic Interests issued by the CA Fair Political Practices Commission, with disclosure obligations to be determined by the Executive Director of the State Bar. Consultant understands and acknowledges that the State Bar is a public corporation and, consequently, certain State Bar employees and volunteers are subject to government-mandated conflict-of-interest provisions. These provisions concern, among other things, accepting gifts or gratuities from potential contracting entities and contracting with entities owned or controlled by the State Bar, certain persons associated with the State Bar, or its employees. With this understanding, Consultant will not take any action which creates a situation which would or which could appear to result in violation of the conflict of interest code provisions by any State Bar employee.

E. Indemnity Obligations of Consultant

To the fullest extent permitted by law, Consultant agrees to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns harmless from and against any and all losses, claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the Agreement, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by Consultant, Consultant's employees, subcontractors, agents, representatives or assigns (collectively, "Consultant's Agents") in the performance or non-performance of the professional services required to be performed by Consultant under the Agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. Consultant will defend, indemnify and hold harmless State Bar (its Board of Governors,

officers, agents, and employees, as the same may be constituted now and from time to time hereafter) from and against any and all liability, losses or damages or any expenses or costs whatsoever to the State Bar, including reasonable attorneys' fees and costs, as a result of any claims, demands, damages, costs or judgments against the State Bar based on allegations that, as a consequence of the services rendered hereunder, any program or software designed, developed, amended, merged or restructured, or any part thereof, alone or in combination with other programs or software, infringes on any patent or copyright or misappropriates a trade secret. If any such program or software or any part thereof, is held to constitute an infringement or misappropriation, and use of the program or software is enjoined, Consultant will, at its own expense, either: (1) procure for the State Bar the right to continue to use the program or software or part thereof; (2) replace the program or software with a non-infringing replacement, provided that such replacement does not compromise performance and otherwise meets the State Bar's specifications; or (3) modify the program or software to make it non-infringing, provided that such modification does not compromise performance and otherwise meets the State Bar's specifications.

In the event both the State Bar and Consultant are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Consultant will agree to provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation wherein Consultant defends the State Bar.

Consultant agrees that its obligations under this indemnity will survive the expiration and termination of this agreement.

F. Insurance Obligations of Consultant

Consultant will provide and keep in full force and effect during the term of this agreement, at Consultant's own cost and expense, the following insurance policies for the joint benefit of Consultant and the State Bar, with an insurer reasonably acceptable to the State Bar:

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.
3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined

single limit.

4. Professional liability insurance with a general aggregate limit of Two Million Dollars (\$2,000,000.00), and an each claim limit of Two Million Dollars (\$2,000,000.00).

Consultant will deliver true and correct copies of its insurance policies required above, and certificates of such insurance to the State Bar offices at 180 Howard Street, San Francisco, CA 94105, Attn: Bill Brauer, Procurement Officer, within seven (7) days of the execution of this agreement. Each such policy will name the State Bar as an additional insured and will state that Consultant's policy shall be primary and that any insurance carried by the State Bar will be noncontributing with respect thereto. Each such policy will provide for thirty (30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If Consultant fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and Consultant will pay upon demand the cost of it to the State Bar or the State Bar may terminate this agreement. In addition to the insurance required to be obtained and maintained by Consultant, if Consultant assigns any portion of the duties under this agreement in accordance with the terms, hereof, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

Consultant will immediately notify the State Bar if Consultant's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If Consultant's commercial general liability insurance contains such restrictive endorsements, Consultant will have five (5) business days to remove said restrictions. If Consultant is unable to do so, the State Bar may terminate this agreement, and will be required to give Consultant no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

G. Termination

The Agreement may be terminated by the State Bar, in its sole discretion, upon fifteen (15) days' written notice to Consultant. In the event of such termination not due to the default by Consultant under the Agreement, Consultant's sole compensation shall be (1) performance fees for completed Work as set forth in the Agreement, (2) an amount determined on a pro rata basis on percent completion for those deliverables in progress but not completed, and (3) reasonable fees for project shutdown based on actual documented costs incurred by Consultant, including but not limited to personnel termination costs; provided, however, that Consultant shall not be paid for any services associated with any work or service which was not authorized by the State Bar pursuant to the agreement. The termination of this Agreement shall not affect the confidentiality provisions of this Agreement, or the performance fees due Consultant which shall survive any termination.

The Agreement may be terminated by the State Bar upon five (5) days' written notice to Consultant in the event Consultant materially breaches any term of the Agreement. Upon notice of termination, Consultant shall deliver to the State Bar any and all work product completed and paid for by the State Bar within thirty (30) days of said notice. In the event the agreement is terminated due to the default by Consultant, Consultant will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties and Consultant will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in the agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by Consultant's default.

Automatic Termination. This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements; (d) failure of Consultant to disclose a relevant financial interest as required by this Agreement, or (e) expiration of the agreement.

H. Ownership of Documents

All work product ("work product") and all rights thereto in the nature of copyright, trademark, patent and rights to ideas are hereby assigned to the State Bar, and are the property of the State Bar whether or not the work is completed. In the event of termination of this agreement, or abandonment or suspension of work performed hereunder, all work product and all such rights thereto existing as of the date of such termination, suspension or abandonment will be assigned to, and will become the property of the State Bar as of such date. The term "work product" shall include, without limitation, any and all versions, whether in print or electronic format, of any and all drawings, plans, graphs, photographs, slides, studies, schedules, budgets, estimates, layouts, and any other products or services that have been or will be prepared or rendered by Consultant, or under Consultant's direction, pursuant to this agreement. Consultant covenants, warrants and represents to the State Bar that Consultant has the right to assign the copyright and the work product.

Consultant will refrain from disclosing any and all versions of plans to any third party without first obtaining the written consent of the State Bar. Consultant will not use or permit a third party to use any of the work product in connection with this project or any other project without the written consent of the State Bar. Consultant will agree to deliver to the State Bar within five (5) days of a written request, all or any portion of the work product set forth in the State Bar's request. Consultant will be permitted to retain copies for information and reference. Consultant will provide the State Bar with updated copies of all work product on a monthly basis either on a computer disk or other reproducible format as requested by the State Bar.

I. Confidentiality and Publicity

Consultant acknowledges and agrees that all information related to these Services, including but not limited to State Bar records, data, electronic information, files, and any other materials or information, maintained in the course of performing Services or obtained either directly from any source or through deduction, including any copies, notes or memoranda thereof created by Consultant are Confidential Information. All Confidential Information obtained or maintained by Consultant, and all rights, title and interest therein, in whatever form, in perpetuity, is and shall, at all times, remain the sole and exclusive Property of the State Bar. Consultant shall deliver all Confidential Information to the State Bar within forty-eight (48) hours of demand.

Consultant agrees to hold all Confidential Information in the strictest confidence and not to make use of such Confidential Information other than as strictly necessary for the performance of Services. Consultant shall safeguard such Confidential Information, and shall take all necessary steps to protect such Confidential Information from loss or accidental disclosure. Consultant recognizes that irreparable harm can be occasioned to the State Bar and to third parties by disclosure of Confidential Information; accordingly, the State Bar may enjoin such disclosure in an appropriate court of law.

Consultant shall not, at any time, issue any public announcements concerning this Agreement, the performance of Services, the Program, the State Bar or Confidential Information without obtaining the prior written consent of the State Bar.

The obligations of this Article shall survive the termination or expiration of the Agreement.

J. Nondiscrimination

During the performance of this agreement, Consultant will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Consultant will comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and applicable regulations promulgated there under (California Administrative Code, Title 2, section 7285.0 et seq.).

The Consultant will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

K. Assignment/Subcontracting

1. **Assignment.** The Consultant will not assign or transfer its interest, in whole or in part, under this agreement, without the written consent of the State Bar, which consent may be granted or withheld in the sole and absolute discretion of the State Bar. The parties acknowledge that the State Bar's obligations under this agreement

primarily concern the financial ability to carry through the terms of payment. Therefore, the State Bar may assign or transfer part or all of its interest in this agreement, provided that such assignment shall not become effective, and the State Bar will not be released from its obligations under this agreement, until such time as the State Bar or the State Bar's assignee makes payment to Consultant of all fees and payments then due and payable to Consultant.

2. **Subcontracting.** Consultant may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the delivery of equipment and services, subject to the written approval of the State Bar.

Consultant will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between Consultant and its subcontractor to be maintained during the term of this agreement.

Any such proposed subcontract shall be subject to the written approval of the State Bar prior to award of such subcontract by Consultant. No subcontract will be approved unless Consultant provides a written guarantee that Consultant's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

L. General Provisions

1. **Force Majeure.** In the event that the State Bar or Consultant is delayed in performing any of its respective obligations under the Agreement, except payment of money, due to force majeure (including acts of God, war, government regulation, disaster, strikes or other labor disputes, civil disorder, acts of domestic or international terrorism or other emergencies beyond the control of the parties making it illegal or impossible to perform), and only if notice of such delay is properly given, such delay will be excused and the period of such delay will be added to the time for performance of the obligation delayed. However, no delay will be permitted if the date, schedule or time period for performance of the obligation is expressly stated in this Agreement not to be subject to extension by reason of force majeure. In the event of a delay due to force majeure, the affected party will exercise due diligence to shorten, avoid and mitigate the effects of the delay and will keep the other party advised as to the continuance of the delay. In the event that force majeure makes completion of obligations under this Agreement impossible, the Agreement may be terminated by either party, by written notice, without any liability, penalty, or prejudice, whatsoever, for any of the reasons listed in the first sentence of this paragraph.
2. **Governing Law.** This agreement will be governed by the laws of the State of California.

3. **Audit.** Consultant agrees that the State Bar or its designee shall have the right to review and copy any financial records and supporting documentation pertaining to the performance of this Agreement. Consultant agrees to maintain such financial records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Consultant agrees to allow the State Bar or its designee access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Consultant agrees to include a similar right of the State Bar or its designee to audit records and interview staff in any subcontract related to performance of this Agreement.
3. **Arbitration.** Any question, claim or dispute arising out of or in connection with this Agreement that is in excess of Five Thousand Dollars (\$5,000.00) will be referred to binding arbitration, except with respect to disputes regarding breaches of confidentiality. Such arbitration will take place before one (1) arbitrator in the City and County of San Francisco, and will be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. The arbitrator will be bound to apply legal principles in accordance with California law. By agreeing to this arbitration clause, neither party waives applicable defenses or immunities available to it under California law. Any arbitration demand made under this clause must be made no later than one year from the expiration or termination of this Agreement. The cost of the arbitration will be borne equally by the parties, each party to pay its own fees and costs. Disputes of Five Thousand Dollars (\$5,000) or less will be handled in Small Claims Court in the City and County of San Francisco.
4. **License.** In those instances where required, Consultant represents and warrants that Consultant holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and shall keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while Consultant is performing the services pursuant to this Agreement.
4. **Relationship of Parties.** Consultant is not an agent of State Bar for any purpose whatsoever, and is not granted, by the terms or execution of this Agreement, any express right of authority to assume or create any responsibility on behalf of, or in the name of State Bar, or to bind State Bar in any manner or thing whatsoever.
5. **State Bar Policies and Procedures.** Consultant will comply with all State Bar safety and personnel policies and procedures during the performance of this Agreement.
6. **Severability.** If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.

7. **Waiver.** Failure of either party to enforce, at any time, any provision of this Agreement shall not be construed as a waiver of such provision or of any other provisions, or of the right of such party thereafter to enforce such provision.